



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

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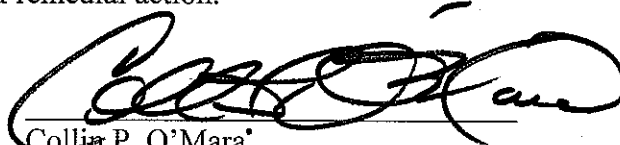
Secretary's Order No. 2011-WM-0023

IN RE: DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL, SITE INVESTIGATIVE AND RESTORATION BRANCH v. DONALD W. WILSON, SHIRLEY M. WILSON, and DON WILSON AUTO PARTS, INC., RESPONDENTS (SIRB DE-1174)

Via Certified Mail
To the Respondents:

This 27th day of July, 2011, the Department of Natural Resources and Environmental Control enters this Order in the above-referenced enforcement proceeding commenced by the Department's Site Investigation and Restoration Branch (SIRB). The Department held a November 10, 2010 hearing before the Department's presiding hearing officer, who prepared a Hearing Officer's Report dated March 22, 2011, which is attached hereto. The Report reviews the record developed at a hearing, and recommends certain findings of fact and conclusions of law. The Report recommends issuance of an Order directing Respondents to undertake certain actions to comply with the Hazardous Substances Cleanup Act based upon evidence submitted at the hearing. I adopt Report's findings and conclusions and the record except for adding SIRB's relief requested to require implementation of the approved Final Plan of Remedial Action. Accordingly, I direct that Respondents shall:

- 1) hire a qualified consultant to be approved by SIRB in order to prepare Remedial Investigation and Feasibility Study ("RFS") of the Site subject to SIRB's review and approval;
- 2) within 90 days of receipt of this Order by Respondents, submit a work plan to SIRB for SIRB's review and approval based upon a projected submission of a complete RFS within one year from this Order; and
- 3) pay SIRB the outstanding response cost billed through the hearing and agree to pay any reasonably incurred response cost incurred following the hearing; and
- 4) implement the approved final plan of remedial action.


Collin P. O'Mara
Secretary

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**IN RE: DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL v. DONALD W. WILSON, SHIRLEY M. WILSON, and DON
WILSON AUTO PARTS, INC. Respondents (SIRB DE-1174)**

Hearing Officer's Report

This hearing officer was assigned to preside over a hearing held on an enforcement action commenced under the authority delegated to the Department of Natural Resources and Environmental Control's Site Investigation and Restoration Branch (SIRB) under the Hazardous Substance Cleanup Act. The following is a summary of the record developed at the hearing and recommended findings of fact and conclusions of law:

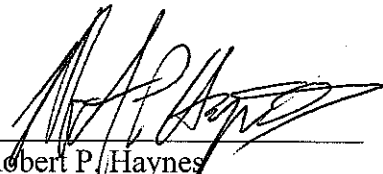
1. SIRB is the part of the Department of Natural Resources and Environmental Control responsible for administering the Hazardous Substance Cleanup Act ("HSCA"), 7 Del. C. Chap. 91.
2. Donald Wilson is the co-owner along with his wife Shirley M. Wilson of two parcels of real estate located at 800 South Walnut Street within the City of Wilmington, as identified on the tax map parcel Nos. 10-00-100019 (lot 1) and Tax Parcel No. 10-00-100020 (lot 4) (hereinafter both properties shall be referred to as "Site"). Ex 16 & Ex 18.
3. Donald Wilson is the President of Don Wilson Auto Parts, Inc. Don Wilson Auto Parts, Inc. rents the Site from Don and Shirley Wilson and operates an automobile salvage business. Donald and Shirley Wilson are the owners and operators of Don Wilson Auto Parts Inc.'s business. Mr. Wilson was hospitalized in March 2009 and Mrs. Wilson assumed responsibility of the business operation following Mr. Wilson's hospitalization.
4. The Site was the subject of SIRB investigation that resulted in an Environmental Assessment of the Site. Ex.1
5. As a result of the EI, SIRB and Respondents entering into Voluntary Cleanup Program Agreement ("VCP Agreement") dated November 21, 2000. Ex. 3.
6. SIRB had the Site investigated by a contractor, Environmental Alliance, Inc, which prepared the preliminary Remedial Investigation ("RI") Report dated June 13, 2001. The RI established the presence of hazardous substances at the Site that needed to be remediated under HSCA. Ex 9.

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7. SIRB's records show that Respondents made at three payments (albeit two partial) towards the response cost incurred by the Department on September 28, 2000, on August 14, 2000 and on July 16, 2009, but that Respondent has failed to pay for response costs billed September 3, 2010 and October 28, 2010. Ex 17.
8. The SIRB records shows that Respondent have been billed and not paid \$6,3096.97 in response costs associated with the remediation of the Site as of the date of the hearing. Ex.17.
9. In a November 17, 2004 letter, SIRB informed Respondent that it was not abiding by the terms of the VCP. The letter outlined options for Respondents to seek relief for any financial hardship in complying with the terms of the VCP Agreement. Ex. 9
10. In a May 18, 2006, letter, SIRB provided a follow-up letter to the November 17, 2004 letter. Ex 10
11. In a June 9, 2009 letter, SIRB wrote to Respondent to provide notice of the termination of the VCP Agreement within 10 days and offered a Consent Order. Ex 11.
12. In a February 4, 2010 letter, SIRB wrote to Respondent under the Regulations indicating that it was commencing the 90 day period to conclude negotiations leading to a Consent Decree. Ex. 12.
13. In a June 2, 2010 letter, SIRB wrote to Respondent as a potentially responsible party for hazardous substances polluting the Site that certain information needed to be provided to establish a claim for financial hardship. Ex 13
14. In an August 26, 2010 letter, SIRB informed Respondent that a hearing had been scheduled for November 10, 2010. Ex 14.
15. On November 10, 2010, a duly publicized hearing was held before this hearing officer acting as an impartial fact finder. Respondent Shirley Wilson was present without legal counsel. SIRB representatives were present and represented by Deputy Attorney General Robert S. Kuehl.
16. At the hearing, SIRB present a case in chief through the sworn testimony of SIRB employees Elizabeth LaSorte, Lawrence Jones, Robert Schulte, Quazi Salahuddin, Timothy Ratsep and Kathleen Stiller.
17. The SIRB witnesses provided testimony to support carrying SIRB's burden to proof by establishing the elements of the case-in-chief, namely, that hazardous substances lead, PAHs and PCBs were present on the Site, that Respondents were the owner/operators of the Site, and that the Department is entitled to direct Respondents to conduct a Remedial Investigations under the Department's approval and oversight and to recover all reasonable response costs incurred by the Department. The testimony was supported by documents introduced as exhibits 1-18.
18. The transcript of the hearing is attached to this Report along with the documents submitted as exhibits, which shall be the record of decision for this Report.
19. At the hearing, Mrs. Wilson questioned the charges for the investigation. SIRB provided her with all copies of the invoices. Respondents did not present any evidence that would justify not being found liable under HSCA.
20. Mrs. Wilson's testimony did not refute or contradict any of the testimony or evidence SIRB presented. Mrs. Wilson testified about the problems with paying and this area was subject of questioning and evidence that showed repeated efforts by SIRB to get her to submit information to the Department in order to justify a case for financial hardship.
21. At the conclusion of the hearing, Mrs. Wilson requested the opportunity to submit a

written response. The request was not opposed and was granted. She requested several extensions and the last extension was in January 2011 and Mrs. Wilson never submitted anything in writing.

22. I find and conclude based upon the preponderance of the evidence submitted into the record that SIRB established the following facts: 1) that hazardous substances, as defined by HSCA and the Department, are present on the Site at levels that require remediation in order to protect the environment and public safety, and 2) Respondents have joint and several liability, as owner/operators of the Site, to remediate the HSCA liability on the Site; and 3) that Respondents have not remediated or reimbursed SIRB's response costs incurred to date and the response costs were that has been performed to date despite numerous reasonable efforts to gain voluntary compliance, including the VCP Agreement, which SIRB properly terminated based upon Respondents' noncompliance. I find that SIRB exhausted all reasonable efforts to reach a settlement before bringing the enforcement action that resulted in the hearing.
23. HSCA imposes strict liability and a duty to remediate based upon the ownership of the land or the operation of a business on the Site. The record is uncontested on the material facts and supports a finding that Respondents own the land and operated a business on the land on which hazardous substances have been found and that Respondents are PRPs under HSCA and are responsible for the remediation of the hazardous substances on the Site.
24. SIRB has requested the following relief be order for the violations that are the subject of this enforcement action, namely: that Respondents be directed:
 - a) hire a qualified consultant to be approved by SIRB in order to prepare Remedial Investigation and Feasibility Study ("RFS") of the Site subject to SIRB's review and approval;
 - b) within 90 days of receipt of this Order by Respondents, submit a work plan to SIRB for SIRB's review and approval based upon a projected submission of a complete RFS within one year from this Order; and
 - c) pay SIRB the outstanding response cost billed through the hearing and agree to pay any reasonably incurred response cost incurred following the hearing.
25. I attach a draft letter Order, which directs the Respondent to take the action supported by this Report if adopted by the Secretary.


Robert P. Haynes
Senior Hearing Officer
DATED: MARCH 22, 2011